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2019 MAR -4 AM 9:27

AMY J HUNLEY
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1 THE RUSSELL'S LAW FIRM, PLC
2 202 E. WILCOX DR.
3 SIERRA VISTA, AZ 85635
4 Tel: (520)458-7246
5 Fax: (855)778-5559
By: D. Christopher Russell, Esquire
State Bar No. 22674
courtdocs@russellslawfirm.com
Attorney for Petitioner

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF COCHISE

8 DAVID WELCH, individually and on behalf
9 of ALL CITIZENS OF COCHISE
COUNTY, PRECINCT FIVE,

10 Petitioner,

11 v.

12 COCHISE COUNTY BOARD OF
13 SUPERVISORS, PATRICK G. CALL,
14 ANN ENGLISH, AND PEGGY JUDD,

15 Respondents.

Case No.: CV201900060

16 **FIRST AMENDED SPECIAL ACTION
17 AND PETITION FOR WRIT OF
18 MANDAMUS, PETITION FOR
19 INJUNCTIVE AND DECLARATORY
20 RELIEF, PETITION FOR REMOVAL
21 OF BOARD OF SUPERVISORS FROM
22 OFFICE**

Assigned Hon.: Monica Stauffer, Div. 7

23 The Petitioner, David Welch, by and through his attorneys undersigned, states that he is a
24 resident within Justice Court Precinct Five, Cochise County, Arizona, and has a right to petition
25 for writ of mandamus, petition for injunctive and declaratory relief in this Court, petition for
26 removal of Board of Supervisors from office, individually and on behalf of all citizens of
Cochise County, Justice Court Precinct Five.

27 The Respondents, Patrick G. Call, Ann English, and Peggy Judd, at all times relevant herein
28 were elected to, and held office as the Cochise County Board of Supervisors.

29 It was, and still is, the Respondents' duty to appoint a qualified and competent Justice of
30 the Peace for Precinct Five after following the open meeting laws and complying with A.R.S.
31 § 38-501, *et. seq.* (conflict-of-interest and anti-self-dealing statute) by properly notifying the
32 public of its intention to self-deal and all conflicts of interest associated therewith.

33 The Petitioner, pursuant to the Rules of Procedure for Special Action against an officer and
34 public body, states, alleges and complains as follows:

PARTIES AND JURISDICTION

1. The Petitioner, David Welch, is a Sierra Vista, Arizona resident living within the Justice Court Five precinct and at the time of filing the original petition in this matter was pending trial in that court. That Petitioner has standing, individually, and on behalf of all Cochise County Justice Court Five residents to bring this action.

2. The Respondent, Cochise County Board of Supervisors (hereinafter “BOS”), is a local “public body” as described pursuant to A.R.S. § 11-202 with its address at 1415 Melody Lane, Suite G, Bisbee, Arizona 85603; the BOS governs Cochise County, Arizona.

3. The Respondent, Patrick G. Call, at all times relevant herein, is a resident of Cochise County, Arizona and was elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is subject to the requirements of A.R.S. §§ 38-501, *et seq.*, 38-431.01, *et seq.* That Respondent, Patrick G. Call, purports to be acting as the Justice of the Peace, Precinct Five, Cochise County, Arizona.

4. The Respondent, Ann English, is a resident of Cochise County, Arizona and was elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is subject to the requirements of A.R.S. §§ 38-503, 38-431.01, *et seq.*

5. The Respondent, Peggy Judd, is a resident of Cochise County, Arizona and was elected, commissioned, qualified and acting as a member of the BOS; that said Respondent is subject to the requirements of A.R.S. §§ 38-503, 38-431.01, *et seq.*

6. That at all times herein, Respondents were all agents of the BOS acting within the course and scope of their duties as elected public officials of a public body and were required to comply with all statutory duties of the office.

7. That the Respondents have caused acts, events, errors, omissions and occurrences in violation of their duties of office and/or have unlawfully exercised their duties of office of which the Petitioner presently complains in Cochise County, Arizona; that venue is proper in Cochise County Superior Court pursuant to A.R.S. § 12-401.

8. That jurisdiction is vested within the Cochise County Superior Court pursuant to A.R.S. §§ 12-123, 12-2012, 12-1831 *et seq.*

1

GENERAL ALLEGATIONS

2 9. On or about February 10, 2019 the BOS had notice that Justice of the Peace Tim
3 Dickerson was resigning from his position as Justice of the Peace for Precinct Five to take
4 another judicial appointment within the county.

5 10. In anticipation of filling the vacancy of Justice of the Peace for Precinct Five, on or
6 about February 10, 2019, the BOS published notice of two (2) separate meetings to be held on
7 February 12, 2019 as follows:

8 a. Special Board Meeting and Possible Executive Session, February 12, 2019 at
9 9:30 a.m. with 2 issues on the agenda (hereinafter “Notice 1”):
10 “1) Discussion regarding the process for filling the vacancy for Justice of the
11 Peace in Justice Precinct 5”; and
12 “2) Appoint _____ as Justice of the Peace for Justice Precinct
13 5.”
14 b. Regular Board Meeting at 10:00 a.m. with a specified agenda that did not include
15 any items related to filling the judicial vacancy (hereinafter “Notice 2”).

16 11. A copy of Notice 1 is attached hereto as **Exhibit 1**.¹

17 12. There is no information contained in either Notice that would put the public on notice
18 that the BOS was going to vote on February 12, 2019 on a “process” for filling the vacancy for
19 Justice of the Peace in JP5. The Notice only informs of the Board’s intent to have a “discussion”
20 regarding the process for filling the vacancy.

21 13. Notice to appoint “blank” as Justice of the Peace does not put the public on notice as to
22 any particular person being considered by the Board for appointment sufficient to allow the
23 public to object or challenge the appointment.

24 14. Neither Notice notifies the public that the BOS intends to appoint one of its own
25 members, Patrick G. Call, to fill the vacancy of JP5 as required by A.R.S. §§ 38-431.02, 38-
26 503 and 38-509.

27

28 ¹ The website link to official posted minutes is:

http://agenda.cochise.az.gov/mindocs/2019/BOS/20190212_1604/595_2.12.19.pdf

1 15. Neither Notice notifies the public of Mr. Call's substantial interest in the outcome of the
2 decision of the process to be used to fill the JP5 vacancy as required by A.R.S. §§ 38-431.02,
3 38-503 and 38-509.

4 16. Neither Notice notifies the public of Mr. Call's substantial interest in the outcome of the
5 decision to appoint Patrick Call to fill the JP5 vacancy as required by A.R.S. §§ 38-431.02, 38-
6 503 and 38-509.

7 17. Neither Notice for the meetings to be held on February 12, 2019 contains any notice to
8 the public that the BOS would be making an actual legal, binding appointment of the position
9 of Justice of the Peace, Precinct Five at either the Special or Regular meetings.

10 18. At the February 12, 2019 Board of Supervisors Special Meeting, the Board began
11 with a public meeting and discussed whether or not they should have an application process or
12 a direct appointment. See Special Meeting Minutes February 12, 2019 attached hereto as
13 **Exhibit 2** and audio of Meeting attached as **Exhibit 3**.²

14 19. The Board of Supervisors never disclosed during the public portion of the February
15 12, 2019 special meeting their intention to appoint Pat Call to the position of JP5 Justice of the
16 Peace. Nor did they disclose Pat Call's substantial direct interest in the outcome of the decision.

17 20. During the February 12, 2018 public portion of the Special Meeting the Board
18 deliberated and discussed the processes the Board should use to fill the vacancy of JP5 Judge
19 which included direct appointment without a public application process v. direct appointment
20 after opening the job to public applicants. Pat Call participated in this discussion and
21 deliberation. See Ex. 2, P. 2, Para. 6.

22 21. During the February 12, 2019 public portion of the Special Meeting Pat call stated
23 that "he agreed that accepting applications would be a lengthy process" and he "agreed that if
24 a committee was put together and the Board did not agree with their suggestion, it would be
25 disappointing to those involved."

28 2 The website link to the audio is:

https://www.cochise.az.gov/sites/default/files/board_of_supervisors/SpcMtgExecSessionJP520190212.mp3

1 22. During the February 12, 2018 public portion of the Special Meeting, Pat Call
2 seconded the motion by Supervisor English to move to executive session to discuss the issue
3 in more “detail” relative to his own appointment at the Justice of the Peace. Id.

4 23. Pat Call’s *participation* in deliberations and *discussions* as to the process to be used
5 for selection of the JP5 Position were prohibited pursuant to A.R.S. § 38-503 in light of his
6 interest in the position of JP5.

7 24. The Board went into executive session at 9:47 a.m. and came out of executive session
8 at 10:14 a.m. Thus, the executive session lasted 27 minutes v. only 16 minutes in open public
9 session. Id.

10 25. The BOS held an executive session on February 12, 2019 which was closed to the public
11 and apparently voted during this closed meeting to select a direct appointment process and to
12 not open the job up for public application, in violation of the open meeting statute A.R.S. §§
13 38-431.01(A)(1) and (D) which prohibits the BOS from taking any legal action during
14 executive session.

15 26. The BOS has not posted the audio or minutes to the public of the discussion which
16 occurred during the February 12, 2019 executive session.

17 27. When the Board came out of its secret executive session, it announced that it was
18 going to “table” the discussion until 11:30 a.m. the same day. Id.

19 28. The Board did not reconvene at the publicly noticed time of 11:30 a.m. Instead, the
20 BOS reconvened at 12:31 p.m., 31 minutes past the publicly announced time. This is in
21 violation A.R.S. § 38-431.02; see also *Cooper v. Arizona Western College Dist. Governing Bd.*, 125 Ariz. 463, 610 P.2d 465 (Div.1, 1980)(This section requires posting of notice, at
23 designated place of public notice, of time and place of continuation of recessed meeting, and
24 where no notice of particular meeting was ever posted at place designated and only public
25 announcement of intention of board to reconvene was verbal announcement by chairman of
26 board to persons present, there was not giving of notice as required by statute, either for separate
27 meeting or for continuation of recessed meeting).

1 29. After reconvening and before any vote to appoint Pat Call occurred, Supervisor
2 English acknowledges a “conflict-of-interest” briefly before Peggy Judd cuts her off. See Ex.
3 audio at 18:42. This is the first and only time Pat Call’s conflict-of-interest is ever mentioned
4 publicly by the board during the February 12, 2019 public portion of the meeting.

5 30. All of the BOS members were aware of Pat Call’s substantial interest in the outcome
6 of their decision to a) select a direct appointment process which excluded other applications
7 from the public and b) to appoint Pat Call as JP5 Judge.

8 31. The meeting minutes state that “Supervisor English moved to appoint Pat Call as
9 Justice of the Peace in Precinct 5” and that “a public vote was had in favor of the motion.”

10 32. The written minutes conflict with the audio recording of the meeting. In the audio,
11 Supervisor Judd “called for a vote with Supervisor Call abstaining” without specifying the
12 subject of the vote. It is only after the vote, from the context of the conversation with those
13 present congratulating Pat Call on getting the JP5 judge position, that it can be inferred that the
14 subject of the vote was to appoint Pat Call.

15 33. During the February 12, 2019 special meeting, Supervisor English discussed in detail
16 her knowledge of Pat Call’s interest in the JP5 position for years prior to February 12, 2019.

17 34. Holding a vote to appoint Patrick G. Call to provide judicial services to the County while
18 he was serving as a member of the BOS is a conflict-of-interest in violation of A.R.S. § 38-503
19 and was required to be disclosed to the public and opened for public discussion before the BOS
20 conducted a vote.

21 35. That because of the conflict-of-interest in self-dealing to a member of the BOS, the
22 Board was required to open up the bidding for the job of Justice of the Peace to other qualified
23 members of the public for competitive bidding on the job and the BOS failed to give any notice
24 to the public whatsoever of the job opening, nor did it consider other job applicants.

25 36. At no point did the BOS notify the public of the conflict-of-interest created by
26 appointing Pat Call, one of its own members to the position of JP5 Judge i.e. that it intended to
27 self-deal by voting for one of its own members to provide his services to the public as the JP5
28 judge.

1 37. At no point on February 12, 2019, or at any time thereafter, has the BOS opened the
2 position of JP5 Judge up for public competitive bidding for the job of JP5 Judge as required by
3 A.R.S. § 38-503 when there is a conflict-of-interest.

4 38. The citizens of JP5, whom Pat Call represents, were left without a voice in the vote to
5 appoint himself to fill JP5 Judge when he abstained from voting, leaving the citizens with no
6 representation in this vote and violating his duties to his constituents.

7 39. That there are several qualified individuals within the Precinct willing to apply for the
8 Justice of the Peace position until the next election can be held.

9 40. A Special Action and Petition for Writ of Mandamus, Petition for Injunctive Relief and
10 Declaratory Relief was filed by David Welch, individually and on behalf of All Citizens of
11 Cochise County, Precinct Five on February 14, 2019 in the Cochise County Superior Court.

12 41. Thomas Fink, an out-of-county judge was assigned to the case.

13 42. On February 22, 2019, Defendants filed for a change of judge pursuant to Rule 42.1,
14 ARIZ.R.Civ.P. that delayed the court action.

15 43. On February 24, 2019, the Cochise County BOS issued a Public Notice of holding a
16 Special Meeting on Tuesday, February 26, 2019 at 10:00 a.m. with the specific purpose of
17 “ratifying” its actions of appointing Pat Call as the JP5 Judge in an apparent attempt to cure its
18 illegal actions in appointing Pat Call to JP5 Judge. A true and correct copy of said Notice
19 (hereinafter “Notice 3”) is attached hereto as **Exhibit 4**.

20 44. Notice of Ratification is an admission that the BOS failed to comply with public open
21 meeting laws and conflict-of-interest laws.

22 45. Notice 3 (ratification Notice) did not disclose Pat Call’s conflict-of-interest as required
23 by A.R.S. §§ 38-431.02, 38-503 and 38-509.

24 46. On Monday February 25, a Superior Court judge issued an injunction, enjoining the
25 Board of Supervisors from taking any further action to appoint Pat Call to JP5. A true and
26 correct copy of the Order is attached hereto as **Exhibit 5**.

27 47. On February 25, 2019, after being served with the lawsuit outlining failures of the BOS
28 to comply with their duties under the law in appointing Pat Call and after the issuance of an

1 injunction, Pat Call went to the Presiding Cochise County Superior Court Judge and requested
2 to take the Loyalty Oath of Office for Justice Court Precinct Five.

3 48. With knowledge that his appointment to JP5 Judge was illegal and invalid, Pat Call took
4 his oath of office on Friday, February 25, 2019 in violation of a Court Order.

5 49. Pat Call has been going to the Justice Court Precinct Five each working day for work as
6 JP5 Judge since March 1, 2019.

7 50. Upon information and belief, the County is paying money to Pat Call to perform services
8 for which he has been illegally appointed.

9 51. With full knowledge of their violations of the law and knowing that actions taken in
10 violation of the law are null and void, the BOS has knowingly failed to correct their actions
11 and comply with the law by considering other qualified applicants.

12 52. Justice Court Five is the busiest Court in Cochise County, with approximately 83% of
13 the counties' felonies passing through it and the Citizens of Cochise County will suffer
14 irreparable harm that is not remediable by damages if the position of JP5 Judge is not filled
15 with a legally appointed, competent and qualified judge as soon as practicable.

16 53. The Citizens of Cochise County will suffer irreparable significant harm that is not
17 remediable by damages if the appointment of Pat Call is deemed null and void as a result of
18 failure to comply with public open meeting laws and conflict-of-interest laws.

19 54. If Pat Call's appointment is null and void, any case heard by him will result in said
20 rulings being void and/or voidable.

21 55. Any citizen appearing in front of Pat Call may object to his authority to hear the case
22 causing delay, back log, and interference with the orderly administration of justice.

23 56. The Board's failure to comply with open meeting laws and conflict-of-interest laws in
24 appointing Pat Call to JP5 will result in a legal disaster for JP5 and end up costing the Citizens
25 of Cochise County excessive legal costs and wasted tax resources in retrying and rehearing
26 cases.

27 57. There are several qualified applicants ready and willing to apply for the job.
28

58. Upon information and belief, several qualified attorneys who have significant experience in JP5, have already submitted their resumes or are willing to submit their resumes and requested that the BOS consider them for the position.

59. The BOS has refused to consider other qualified applicants purely to serve its own self-interests rather than the Citizens of Cochise County.

60. There has been no public notice of a resignation by Pat Call from the BOS.

61. During the February 19, 2019 meeting, Pat Call participated in the meeting to discuss how they will replace him on the BOS and Pat Call stated “this is dependent upon what happens with the lawsuit right?” to which the other members agreed. See audio from February 19, 2019 special meeting.

COUNT I
(Declaratory Action)

62. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents as if the same where fully set forth herein.

63. That the Petitioner, and the remainder of the residents within Justice Court Five Precinct, have a legal, protectible right to have their legal actions that come before the Justice of the Peace to be determined by a qualified and properly appointed or elected Justice of the Peace.

64. That a controversy exists between the parties, as stated herein, and the Petitioner, and the remainder of residents within Justice Court Five Precinct, have legal rights that have, or will be, affected by the BOS's improper and illegal actions.

65. That all meetings by the BOS are required to be public A.R.S. §§ 38-431.01(A).

66. The BOS is required to provide the public with legal "notice" of an "agenda of the matters to be discussed or decided at the meeting....at least twenty four hours before the meeting". A.R.S. § 38-431.03 (G).

67. "Agendas required...shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto." A.R.S. § 38-431.03(H).

1 68. “Notice of executive sessions shall...include...a general description of the
2 matters to be considered” and “shall provide more than just a recital of the statutory provisions
3 authorizing the executive session”.

4 69. It is illegal to discuss...matters which have not been specifically listed on legal
5 agenda for the meeting. A.R.S. § 38-431.03 ; see also Op.Atty.Gen. No. I90-019, 1990 WL
6 484053; Op.Atty.Gen. No. I79-192, 1979 WL 23259. See Op.Atty.Gen. No. I83-111, 1983 WL
7 42777, 1983 WL 42754 (School district administrator who is also a salaried employee of a
8 nonprofit corporation which rents district facilities for summer school and other classes would
9 have to file a disclosure statement with the school board and should not participate in any
10 manner in decisions involving contracts between the district and the corporation).

11 70. All legal action taken by the BOS must be voted on in a public meeting. A.R.S. §§ 38-
12 431(3); 38-431.01 *et seq.*

13 71. That no vote or legal action can be taken during an executive session, which is closed to
14 the public, to bind the public body. A.R.S. § 38-431.01 (A)(1) and (D).

15 72. That all actions taken in violation of the open meeting statutes are null and void. A.R.S.
16 § 38-431.05.

17 73. That all appointments made in violation of the conflict-of-interest statutes are null and
18 void. A.R.S. § 38-503.

19 74. That declaratory judgment relief is both necessary and proper in order to set forth and
20 determine the rights, obligations, and liabilities that exist among the parties because the BOS
21 did not comply with statutes requiring public notice of Respondent Patrick G. Call’s conflict-
22 of-interest prior to the vote; that the BOS did not disclose that it would be voting for any
23 particular candidate for the appointment of a Justice of the Peace at the special meeting; that
24 the BOS’s vote to proceed with direct appointment and not to take public applications was done
25 in executive session and is invalid; that the BOS failed to open the position up to public
26 application (competitive bidding) in the face of Mr. Call’s conflict-of-interest.

27 75. That the BOS Notice 1 to “discuss” the process by which they would fill the vacancy of
28 JP5 did not legally notice the public that the BOS would be voting on a process that day.

1 76. That the BOS Notice 1 containing a “blank” for the appointment of position of JP5 was
2 not legal notice to the public that it intended to appoint any particular candidate to the position
3 of JP5 and prevented the public from knowing that the BOS intended to appoint Pat Call to the
4 position, who had a substantial conflict-of-interest and prevented the public from appearing to
5 object to his appointment.

6 77. That the BOS cannot cure its notice defects by ratification because public notice requires
7 notice of the conflict-of-interest and public competitive bidding before a vote can be valid.

8 78. That the BOS Notice 3 (ratification notice) did not legally notice the public of Pat Call’s
9 substantial conflict-of-interest in the position of JP5 and therefore cannot be used to “ratify” its
10 prior vote to appoint Pat Call.

11 79. That the BOS Notice 3 (ratification notice) failed to comply with A.R.S. § 38-431.05
12 which requires that that the BOS “shall make available...all deliberations, consultations and
13 decisions by members of the public body that preceded and related to such action” as a
14 condition to ratification” because it did not post its meeting minutes from the February 12, 2019
15 executive session where they obviously deliberated in secret issues related to the vote.

16 80. That the BOS violated open meeting laws by failing to make its meeting minutes for the
17 February 12, 2019 Special Meeting available to the public within three (3) working days of the
18 meeting.

19 81. That the appointment of Patrick G. Call to Justice of the Peace on February 12, 2019
20 having been done in violation of the open meeting laws and conflict-of-interest laws was null
21 and void, and should be declared null and void.

22 82. That this Court should declare Pat Call’s participation with the BOS in appointing
23 himself a violation of his duties of office in violation of A.R.S. §§ 38-510, 38-447, 38-443.

24 83. That Pat Call’s violations of A.R.S. § 38-503 were knowing and intentional and his
25 actions were done with the intent to deprive the public of information.

26 84. That each of the BOS actions in violating A.R.S. § 38-503 were knowing and intentional
27 and done with the intent to deprive the public of information.

1 85. That Pat Call should be enjoined from sitting or serving in any manner as Justice of the
2 Peace for Justice Court, Precinct Five in light of his malfeasance, and knowing and intentional
3 violations of laws to participate in appointing himself, showing he does not possess the ethics
4 required for the position of Justice of the Peace.

5 86. That Pat Call, having participated in criminal conduct by violating his duties of office
6 in violation of A.R.S. §§ 38-503, 38-509, 38-510, 38-447, 38-443, 38-504(c) be forever
7 enjoined from filling the position of JP5.

8 87. That all of the BOS, having participated in criminal conduct by violating their duties of
9 office in violation of A.R.S. §§ 38-503, 38-509, 38-510, 38-447, 38-443, 38-504(c) be removed
10 from public office pursuant to A.R.S. § 38-431.07.

11 88. That A.R.S. § 38-504(c) provides as follows:

12 A public officer or employee shall not use or attempt to use the officer's or employee's
13 official position to secure any valuable thing or valuable benefit for the officer or
14 employee that would not ordinarily accrue to the officer or employee in the performance
15 of the officer's or employee's official duties if the thing or benefit is of such character as to
manifest a substantial and improper influence on the officer or employee with respect to
the officer's or employee's duties.

16 89. That A.R.S. § 38-503 provides in relevant part as follows:

17 A. Any public officer or employee of a public agency who has....a substantial interest
18 in any contract, sale, purchase or service to such public agency shall make known that
19 interest in the official records of such public agency and shall refrain from voting upon
20 or otherwise participating in any manner as an officer or employee in such contract,
sale or purchase.

21 B. Any public officer or employee who has...a substantial interest in any decision of a
22 public agency shall make known such interest in the official records of such public
23 agency and shall refrain from participating in any manner as an officer or employee in
such decision.

24 C. Notwithstanding the provisions of subsections A and B of this section, no public
25 officer or employee of a public agency shall supply to such public agency any
equipment, material, supplies or services, unless pursuant to an award or contract let
after public competitive bidding... (exceptions do not apply so they are omitted).

26 90. That violation of § 38-503 and/or § 38-504(c) is a felony or misdemeanor depending on
27 *scienter*. See § 38-510 which provides as follows:

28 A. A person who:

1. Intentionally or knowingly violates any provision of §§ 38-503 through 38-505 is guilty of a class 6 felony.
2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.

B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

91. That A.R.S. § 38-443: Malfeasance provides as follows:

A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

92. That A.R.S. § 38-447 provides as follows:

An officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing evidences of indebtedness, who violates any provision of such laws, is guilty of a class 5 felony, and is forever disqualified from holding any office in this state. A.R.S. § 38-447.

COUNT II
(Writ of Mandamus)

93. The Petitioner hereby incorporates in its entirety all foregoing allegations and contents as if the same where fully set forth herein.

94. That the Respondents had a legal duty to provide notice to the public of its agendas for issues to discuss and upon which it intends to.

95. That Respondents had a duty to notify the public, before any vote, that it intended to consider appointing one of its own members, Respondent, Patrick G. Call, as the Justice of the Peace for Precinct Five.

96. That the Respondents had a legal duty to disclose to the public, before any vote, that Respondent, Patrick G. Call, had a substantial conflict-of-interest in applying for the Justice of the Peace position

97. That the Respondents, in light of Calls substantial conflict-of-interest, had a legal duty to open the JP5 Justice position up for public bidding by other qualified candidates before taking a vote.

1 98. That the Respondents had a legal duty to vote, after proper notice to the public,
2 in a public meeting on all legal actions taken, which includes 1) the process by which they
3 would fill the JP 5 vacancy, and 2) the candidates that they would be considering.

4 99. That the Respondents had a legal duty to follow the laws of this State.

5 100. That the Respondents have breached their duties and have abused their discretion
6 as stated herein.

7 101. Moreover, Respondents have engaged in criminal conduct in violation of A.R.S.
8 §§ 38-503, 38-447, and 38-443, 38-504(c) by knowingly violating said statutes with the intent
9 to deprive the public of information.

10 102. That this Court issue a Writ of Mandamus immediately removing each of the
11 Respondents from their public office on the Board of Supervisors pursuant to A.R.S. 38-431.07.

12 103. That the Petitioner has no plain or adequate remedy at law, other than to have the
13 Court declare the appointment of Pat Call to position of JP5 Judge as null and void and to issue
14 a Writ of Mandamus requiring Respondents to comply with the open meeting statutes and
15 properly notify the public of its intent to appoint one of its own members to fill the vacancy of
16 Justice of the Peace and to open the position to the public for application (bidding) by other
17 qualified candidates.

18 104. That the Court should issue a Writ of Mandamus requiring the BOS to convene
19 a proper judicial selection committee to assist in selecting the candidate given their
20 demonstrated malfeasance of their duties in accordance with law.

21 105. That the Court should also issue a Writ of Mandamus ordering the BOS to
22 immediately produce the minutes of the executive session for in camera review by the Court
23 for consideration of release to the public as being relevant to this action pursuant to A.R.S. §
24 38-431.07(c). Specifically, it is relevant to showing the Board Member's knowing and
25 intentional violations of the relevant laws herein. Where statutory notice provisions for
26 executive session have not been complied with, the minutes are not confidential. *State v.*
27 *Murphy*, 131 Ariz. 354, 641 P.2d 268 (Div.2, 1982)(Defendant mayor's conduct of releasing
28 minutes of an executive session of city council to news media was not chargeable under Public

1 Meetings and Proceedings Law, § 38-431.01 *et seq.*, where no notice of executive session was
2 given other than an announcement by vice mayor, in that the “executive session” did not
3 conform to statutory requirements for holding of an executive session under the open meeting
4 law).

5 106. That this Court issue a Writ of Mandamus ordering Pat Call to pay back to
6 Cochise County any salary he has received for services rendered as JP5 Judge.

7 107. That this Court issue a Writ of Mandamus ordering BOS vis-à-vis the county to
8 stop paying the legal fees for the Respondents related to this lawsuit and any other legal action
9 arising from their violation of the open meeting laws and conflict-of-interest laws in appointing
10 Pat Call to JP5.

11 **COUNT III**
12 **(Injunctive Relief)**

13 108. The Petitioner hereby incorporates in its entirety all foregoing allegations and
14 contents as if the same where fully set forth herein.

15 109. That the Respondents’ actions as specifically stated herein have been in violation
16 of the law and in violation of the Petitioner’s rights, and all those of Cochise County.

17 110. That the Respondents’ actions adversely affect and/or threaten the Petitioner’s
18 right, as well as the rights of all those in Justice Court Five, to have his (their) legal action(s)
19 decided by a competent and properly appointed or elected Justice of the Peace.

20 111. The Respondents’ actions in appointing one of their own, Respondent Patrick G.
21 Call, is invalid, as specifically stated herein and null and void.

22 112. That the Petitioner has no adequate remedy at law and will suffer irreparable
23 harm if injunctive relief is not granted as his legal rights will be determined by an incompetent
24 and improperly appointed Justice of the Peace.

25 113. That Pat Call be enjoined from sitting or serving in any manner as Justice of the
26 Peace for Justice Court, Precinct Five in light of his malfeasance, and knowing and intentional
27 violations of laws to participate in the appointment of himself, showing he does not possess the
28 ethics required for the position of Justice of the Peace.

1 114. That the BOS be enjoined from paying any salary to Pat Call for any services
2 rendered as JP5 judge.

3 115. That the BOS be enjoined from ratifying its illegal vote by providing after the
4 fact notice of Pat Call's interest in violation of open meeting laws requiring such notice before
5 any such vote is had.

6 116. That this Court should issue an injunction prohibiting the BOS from conducting
7 any further executive sessions/meetings on this issue and order the BOS to hold all meetings
8 in public in compliance with the open meetings statutes on any issue relating to appointment
9 of the position of JP5 judge.

10 117. That this Court enjoin BOS from paying for any of the legal fees incurred in this
11 suit for any of the Respondents pursuant to A.R.S. § 38-431.07(B) which states that "A public
12 body shall not expend public monies to employ or retain legal counsel to provide legal services
13 or representation to the public body or any of its officers in any legal action commenced
14 pursuant to any provisions of this article."

15 118. That the BOS be enjoined from paying any legal fees on behalf of any of
16 Respondents related to this lawsuit or any investigation arising out of the allegations raised in
17 this lawsuit. See A.R.S. § 38-431.07 ("A public body shall not expend public monies to employ
18 or retain legal counsel to provide legal services or representation to the public body or any of
19 its officers in any legal action commenced pursuant to any provisions of this article").

20
21 **COUNT IV**
(Removal from Office)

22 119. The Petitioner hereby incorporates in its entirety all foregoing allegations and
23 contents as if the same where fully set forth herein.

24 120. That each Respondent herein knowingly violated the conflict-of-interest and
25 open meeting laws with the intent to deprive the public of information in violation of A.R.S.
26 §§ 38-510, 38-447, 38-443.

27 121. This Court should immediately remove all three Respondents from their public
28 office and forever enjoin each Respondent from serving in any public office of this state. See

1 A.R.S. § 38-431.07(A) (“If the court determines that a public officer with intent to deprive the
2 public of information knowingly violated any provision of this article, the court may remove
3 the public officer from office.”).

4 **COUNT V**
5 **(Attorney Fees, Costs and Penalties)**

6 122. The Petitioner hereby incorporates in its entirety all foregoing allegations and
7 contents as if the same where fully set forth herein.

8 123. That the Petitioner is entitled to an award of attorney fees pursuant to A.R.S. §§
9 38-431.07 and 12-2030.

10 124. That the Petitioner is entitled to an award of costs pursuant to A.R.S. §§ 12-341
11 and 12-1840.

12 125. That civil monetary penalty should be accessed against each Board Member
13 individually, which may be withheld from their pay.

14 **WHEREFORE**, the Petitioners having stated their requests for relief against the
15 Respondents herein pray as follows:

- 16 1. That this Court issue an Order declaring Respondent Patrick G. Call's February
17 12, 2019 appointment as Justice of the Peace Precinct Five null and void;
- 18 2. That this Court issue an injunction enjoining Pat Call from serving in any
19 capacity as JP5 Judge or receiving any salary for his illegal services;
- 20 3. That this Court issue an order requiring Pat Call to pay Cochise County back for
21 any illegal salary he has received for services rendered as JP5 Judge;
- 22 4. That this Court issue an injunction enjoining the BOS from paying Pat Call for
23 any illegal services rendered as JP5 Judge;
- 24 5. That this Court issue an order enjoining the BOS from taking any action to ratify
25 its February 12, 2019 vote on grounds that ratification cannot cure a failure to
26 notify the public of Pat Call's substantial interest in the JP5 position before a vote
27 was taken because said failure prevented the public from expressing their
28 objections and having them considered before the vote;

- 1 6. That this Court issue an order immediately removing Pat Call, Ann English and
- 2 Peggy Judd from office for their knowing violation of A.R.S. § 38-503 and open
- 3 meeting laws with the intent to deprive the public of information;
- 4 7. That Pat Call be declared unfit to serve as JP5 Judge due to his knowing and
- 5 intentional violations of the law in participating in the appointment of himself to
- 6 the position of JP5 judge;
- 7 8. Alternatively, that this Court issue a Writ of Mandamus ordering the Respondents
- 8 to comply with the open meeting statutes and properly notify the public of its
- 9 intent to appoint one of its own members to fill the vacancy of Justice of the
- 10 Peace and to open the position to the public for application (bidding) by other
- 11 qualified candidates;
- 12 9. That this Court issue a Writ of Mandamus ordering the Respondents to convene
- 13 the proper Justice of the Peace selection committee, and properly consider other
- 14 qualified applicants for Justice of the Peace;
- 15 10. That this Court issue a Writ of Mandamus ordering the BOS to immediately
- 16 produce the minutes of the executive session for in camera review by the Court
- 17 for consideration of release to the public as being relevant to this action pursuant
- 18 to A.R.S. § 38-431.07(c).
- 19 11. That this Court issue an injunction enjoining the Respondents from holding any
- 20 further closed meetings to vote on filling the vacancy of Justice of the Peace,
- 21 Precinct Five;
- 22 12. That this Court issue an injunction prohibiting the BOS from conducting any
- 23 further executive sessions/meetings on this issue and order the BOS to hold all
- 24 meetings in public in compliance with the open meetings statutes;
- 25 13. That the Court order monetary penalties be assessed against the Respondents
- 26 individually;
- 27 14. That Petitioner be awarded any and all attorney fees and costs incurred in filing
- 28 this action; and,

15. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 4 day March, 2019.

THE RUSSELL'S LAW FIRM, PLC

By: D. Christopher Russell
Attorney for Petitioners

A copy of the foregoing was
mailed this 4 day of March, 2019 to:

Honorable Monica L. Stauffer
Greenlee County Superior Court
P.O. Box 1296
Clifton, Arizona 85533

and served via email pursuant to Rule 5(c)(D) & (E),
ARIZ.R.CIV.P. this 4 day of March, 2019 on:

Jim Jellison
Jellison Law Offices, PLLC
36889 North Tom Darlington Drive
Suite B7, Box 2800
Carefree, Arizona 85377
(602) 550-6405
Fax: 480-894-1414

By: ✓



Cochise County Board of Supervisors

Public Programs...Personal Service
www.cochise.az.gov

PEGGY JUDD
Chairman
District 3

EDWARD T. GILLIGAN
County Administrator

PATRICK G. CALL
Vice-Chairman
District 1

SHARON GILMAN
Associate County Administrator

ANN ENGLISH
Supervisor
District 2

ARLETHE G. RIOS
Clerk of the Board

AGENDA FOR SPECIAL BOARD MEETING AND POSSIBLE EXECUTIVE SESSION

Tuesday, February 12, 2019 at 9:30 a.m.

BOARD OF SUPERVISORS EXECUTIVE CONFERENCE ROOM
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Cochise County Board of Supervisors and to the general public that the Board of Supervisors will hold a meeting open to the public for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the Board, the executive session will be held immediately after the vote and will not be open to the public.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

ROLL CALL

Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.

The Board may permit public comment during the discussion of any item on this agenda. If you wish to be heard on a specific item, please sign up to be heard using the 'Specific Item' on the speaker form provided, and please list the item about which you wish to be heard. Persons will be permitted three minutes to speak.

Pursuant to ARS 38-431.03(B), minutes and discussions in executive session shall be kept confidential.

ACTION

Board of Supervisors

1. Discussion regarding the process for filling the vacancy for Justice of the Peace in Justice Precinct 5.
2. Appoint _____ as Justice of the Peace for Justice Precinct 5.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph)(1), the Board may go into executive session for the discussion or consideration of appointment of a public officer, appointee or employee of the public body.

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability. Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

Cochise County Board of Supervisors
1415 Melody Lane, Building G Bisbee, Arizona 85603
520-432-9200 520-432-5016 fax board@cochise.az.gov

AI-4399

0.

Special / Executive Session Board of Supervisors Meeting

Meeting Date: 02/12/2019

Discussion of Constable Applications

Department: Board of Supervisors

Presentation:

Recommendation:

Document Signatures:

of ORIGINALS

NAME n/a
of PRESENTER:

Submitted for Signature:

Mandated Function?:

TITLE n/a
of PRESENTER:

Source of Mandate
or Basis for Support?:

Information

Agenda Item Text:

Discussion regarding the process for filling the vacancy for Justice of the Peace in Justice Precinct 5.

Background:

Board would like to discuss the process to fill a vacancy in a Justice Court.

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

n/a

Special / Executive Session Board of Supervisors Meeting**Meeting Date:** 02/12/2019

Justice of the Peace Appointment

Department: Board of Supervisors**Presentation:****Document Signatures:****NAME** Britt Hanson
of PRESENTER:**Mandated Function?:****Recommendation:****# of ORIGINALS****Submitted for Signature:****TITLE** Chief Civil Deputy
of PRESENTER: County Attorney**Source of Mandate**
or Basis for Support?:**Information****Agenda Item Text:**

Appoint _____ as Justice of the Peace for Justice Precinct 5.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph)(1), the Board may go into executive session for the discussion or consideration of appointment of a public officer, appointee or employee of the public body.

Background:

With the recent appointment of Justice of the Peace Tim Dickerson in Justice Precinct 5 to the Cochise County Superior Court by Governor Ducey, the Board of Supervisors shall appoint a person from that precinct to serve as justice of the peace.

16-230. Vacancy in certain state or county offices; election

A. Notwithstanding any other statute and except as prescribed by subsection C of this section, for state and county offices that provide for a four-year term of office, the following applies if there is a vacancy in office due to death, disability, resignation or any other cause:

1. If a state office becomes vacant, the governor shall appoint a person of the same political party as the person vacating the office to fill the portion of the term until the next regular general election. If the person vacating the office changed political party affiliations after taking office, the person who is appointed to fill the vacancy shall be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office. If the vacancy occurs within the first two years of the term, and before the date on which a nomination paper is required to be filed as prescribed by section 16-311, a primary election shall be held as otherwise provided by law to determine candidates to fill the unexpired term. At the next regular general election, the person elected shall fill the remainder of the unexpired term of the vacant office.

2. If a county office becomes vacant, the board of supervisors shall appoint a person of the same political party as the person vacating the office to fill the portion of the term until the next regular general election. If the person vacating the office changed political party affiliations after taking office, the person who is appointed to fill the vacancy shall be of the same political party that the vacating officeholder was when the vacating officeholder was elected or appointed to that office. If the vacancy occurs within the first two years of the term, and before the date on which a nomination paper is required to be filed as prescribed by section 16-311, a primary election shall be held as otherwise provided by law to

determine candidates to fill the unexpired term. At the next regular general election, the person elected shall fill the remainder of the unexpired term of the vacant office.

Each county's board of supervisors sets the geographical boundaries, known as precincts, of that county's Justice of the Peace Courts. Generally, these precincts are larger than city or town limits and typically incorporate an entire city or town and parts of other communities.

A Justice of the Peace:

- Is elected to a four-year term
- Must be at least 18 years old
- Must be an Arizona resident
- Must be a qualified voter in the precinct in which duties of office will be performed
- Must read and write English
- Need not be an attorney

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

Ms. Rios will ensure a PAF is completed for Finance/HR; as well as any other documents required for administrative purposes.

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
SPECIAL/EXECUTIVE MEETING HELD ON
Tuesday, February 12, 2019**

A special meeting of the Cochise County Board of Supervisors was held on Tuesday, February 12, 2019 at 9:30 a.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Peggy Judd, Chairman; Patrick G. Call, Vice-Chairman; Ann English, Supervisor

Staff Present: Edward T. Gilligan, County Administrator

Sharon Gilman, Associate County Administrator

Britt W. Hanson, Chief Civil Deputy County Attorney

Elda Orduno, Civil Deputy County Attorney

Amanda Baillie, Public Information Officer

Arlethe G. Rios, Clerk of the Board

Chairman Judd called the meeting to order at 9:31 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

ACTION

Board of Supervisors

1. Discussion regarding the process for filling the vacancy for Justice of the Peace in Justice Precinct 5.

Ms. Orduno explained that ARS 16-230 governs the process for the Board to fill the vacancy. She said that the Board will appoint someone of the same party, republican, to cover the term until the election in November of 2020.

Mr. Gilligan confirmed his attendance telephonically.

Mr. Hanson added that there was no mandated legal process to fill a county officer vacancy and that the process was up to the Board's discretion of taking applications or not taking applications and making a direct appointment. He noted that due to timing of the vacancy he recommended that the Board move through the process as quickly as possible to not disrupt the operations of JP 5.

Chairman Judd said that she did not think the Board should take applications as it would lengthen the process and added that one of the precinct judges had suggested forming a

committee with the interested stakeholders and receive their input.

Supervisor English said that it was important to note that a justice of the peace did not have to have a legal background and that she wanted to choose someone that could comply with the duties of the position until the election and then the voters from that precinct would decide.

Mr. Gilligan entered the meeting in person at 9:37 a.m.

Supervisor English continued and said that she was not sure that she would want to go through an application process.

Chairman Judd said that she also did not want to go through an application process, but would be very open to a committee driven process.

Supervisor English said that a committee would only be an advisory capacity and the Board might not agree with their input.

Vice-Chairman Call agreed that accepting applications would be a lengthy process and agreed that if a committee was put together and the Board did not agree with their suggestion, it would be disappointing to those involved.

Chairman Judd said that she had not considered the comments regarding a committee process, but now agreed that a committee might not be the best idea.

Mr. Gilligan said that he spoke to Judge Tim Dickerson and he also shared the perspective that a committee could be formed to help sort through applications because Judge Dickerson agreed that this type of vacancy would draw a significant volume of interested parties. Judge Dickerson had made arrangements for a Pro Tem to cover his calendar from March 1, 2019 to a date uncertain, when the person the Board selects takes office. Judge Dickerson said that this would allow for enough time for a thorough vetting of potentially hundreds of applications.

Mr. Gilligan said that it was his recommendation that a simple direct appointment would be the most prudent action for the Board and listed several reasons:

1. He did not think that long; drawn-out recruitment would be appropriate with the current timeline.
2. Budget season was approaching and appointing instead of recruiting would assist the person in that position to be a part of that process.
3. There is a major concern for continuity of operations and personnel if this decision is delayed.
4. The person chosen should be familiar with county processes, have a proven record of public service, and the Board should be confident in their ethical bearing because a mistake would ultimately be the Board's responsibility
5. With the given timeline appointing rather than recruiting is practical.

The Board thanked Mr. Gilligan for his thoughts on the process and his direction on how to move forward.

Supervisor English said that she thought this would be an appropriate time to go into executive session and move onto item number two.

2. Appoint _____ as Justice of the Peace for Justice Precinct 5.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph)(1), the Board may go into executive session for the discussion or consideration of appointment of a public officer, appointee or employee of the public body.

Supervisor English said that the process was simple and she would like to go into executive session to discuss the matter in more detail.

Ms. Gilman and Ms. Baillie exited the room.

Mr. Hanson said that he recommended the Board go into executive session if more details needed to be discussed.

Supervisor English moved to go into executive session. Vice-Chairman Call seconded the motion, it carried unanimously, and the Board went into executive session at 9:47 a.m.

The Board came out of executive session at 10:14 a.m.

Supervisor English moved to table this item until 11:30 a.m. on the same day. Vice-Chairman Call seconded the motion.

Chairman Judd called for the vote and it was approved 3-0.

Chairman Judd reconvened the meeting at 12:31 p.m. in open session past the original time of 11:30 a.m. due to the Board's attendance to a regular meeting and work session that were already scheduled.

Supervisor English moved to appoint Pat Call as Justice of the Peace in Precinct 5. Chairman Judd seconded the motion.

Supervisor English asked if she should note an effective date as part of the motion.

Mr. Hanson said that Judge Dickerson would vacate that office on March 1, 2019; that would be the effective date of Vice-Chairman Call's appointment.

Supervisor English stated that over the years while serving along side Vice-Chairman Call he had always shared interest for that position and that when she was aware that there could be a vacancy there she thought that it would be a good fit.

Chairman Judd said that she was not aware of an interest from Vice-Chairman Call, but that she thought it was a good choice, especially with the knowledge that the voters of that area had confidence in Vice-Chairman Call's character.

Mr. Hanson suggested that the Board relay a message on why they decided to appoint and not recruit.

Supervisor English said that due to timing and the required training for justice of the peace, along with the upcoming budget, she did not think an application process would be the most beneficial decision. She noted that the justice of the peace decision did not require a law degree or law experience since it was a citizen's court and added that the voters would have the opportunity to make their voices heard at the next general election in 2020.

Chairman Judd said she agreed with Supervisor English and was comfortable foregoing the application process.

Chairman Judd called for the vote and it was approved 2-0-1 (Call abstained).

Chairman Judd adjourned the meeting at 12:36 p.m.

APPROVED:

Peggy Judd, Chairman

ATTEST:

Arlethe G. Rios, Clerk of the Board



Cochise County Board of Supervisors

Public Programs...Personal Service
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PEGGY JUDD
Chairman
District 3

EDWARD T. GILLIGAN
County Administrator

PATRICK G. CALL
Vice-Chairman
District 1

SHARON GILMAN
Associate County Administrator

ANN ENGLISH
Supervisor
District 2

ARLETHE G. RIOS
Clerk of the Board

AGENDA FOR REGULAR BOARD MEETING

Tuesday, February 26, 2019 at 10:00 AM
BOARD OF SUPERVISORS HEARING ROOM
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

ROLL CALL

Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.

The Board may permit public comment during the discussion of any item on this agenda. If you wish to be heard on a specific item, please sign up to be heard using the 'Specific Item' on the speaker form provided, and please list the item about which you wish to be heard. Persons will be permitted three minutes to speak.

Note that some attachments may be updated after the agenda is published. This means that some presentation materials displayed at the Board meeting may differ slightly from the attached version.

CALL TO THE PUBLIC

This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.

CONSENT

Board of Supervisors

1. Approve the Minutes of the regular meeting of the Board of Supervisors of February 12, 2019. -- Approved
2. Appoint Richard Karwaczka as the Public Defender effective February 10, 2019. -- Approved
3. Create the Legal Advocate Department effective February 10, 2019. -- Approved

Community Development

4. Adopt Resolution 19-02 authorizing the abandonment of a dedicated public right-of-way within Mescal Lakes Unit II, known as a portion of Dorothy Avenue described in Exhibit A. -- Approved

Finance

5. Approve demands and budget amendments for operating transfers.

--
Approved

ACTION

Board of Supervisors

6. Pursuant to A.R.S. 38-431.05, ratify the appointment of Pat Call as Justice of the Peace for Precinct 5, effective as of March 1, 2019, as made in open session at a special meeting held on February 12, 2019. --
Removed
From
Agenda

On February 12, 2019, at a special meeting of the Board, two members of the Board of Supervisors voted to appoint Supervisor Pat Call as Justice of the Peace for Precinct 5, effective as of March 1, 2019. This vote was taken in open session. Supervisor Call, being the subject of the proposed appointment, abstained from voting. This agenda item is being proposed for the Board to have the opportunity to ratify that appointment. A more detailed description of the action to be ratified is in the minutes of the open session for that February 12, 2019 special meeting, which minutes are attached to the agenda item or are available from the Clerk of the Board of Supervisors.

7. Annual performance review of County Administrator and discussion and possible action regarding the term of the contract with County Administrator Edward Gilligan . --
Approved

Pursuant to A.R.S. § 38-431.03, Subsection (A), paragraph (1), the Board may enter into executive session for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, or resignation of a public officer, appointee, or employee of any public body.

Health & Social Services

8. Approve IGA between the Arizona Department of Health Services and Cochise County Health and Social Services regarding Childhood Lead Poisoning Prevention Services project, in the annual amount of \$25,000, effective February 1, 2019 through January 31, 2024. --
Approved

Human Resources

9. Approve the proposed employer/employee health care benefit cost share schedule for fiscal year 2019-2020. --
Approved

Information Technology

10. Approve the Cochise County Educational Technology Consortium (CCETC) Proposal and Acceptance Offer in response to Request for Proposal 2019: CCETC Fiber Build. --
Approved

STATE & FEDERAL LEGISLATION

11. Discussion and possible action regarding state and federal legislative matters listed or described in the attached County Supervisors Association Legislative Policy Committee Agenda, the Arizona Association of Counties (AACo) Legislative Policy Committee Agenda, and the proposed State budget, and other matters related thereto. -- Approved

REPORT BY EDWARD T. GILLIGAN COUNTY ADMINISTRATOR -- RECENT AND PENDING COUNTY MATTERS

SUMMARY OF CURRENT EVENTS

Report by District 1 Supervisor, Patrick Call

Report by District 2 Supervisor, Ann English

Report by District 3 Supervisor, Peggy Judd

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability. Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

Cochise County Board of Supervisors
1415 Melody Lane, Building G Bisbee, Arizona 85603
520-432-9200 520-432-5016 fax board@cochise.az.gov

Consent **1.**

Board of Supervisors

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Minutes

Department: Board of Supervisors

Presentation:

Document Signatures:

NAME n/a
of PRESENTER:

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

TITLE n/a
of PRESENTER:

Source of Mandate

or Basis for Support?:

Information

Agenda Item Text:

Approve the Minutes of the regular meeting of the Board of Supervisors of February 12, 2019.

Background:

Minutes

Department's Next Steps (if approved):

Signed minutes routed for processing and posted on the internet.

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

Scan to OnBase and File.

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

Minutes

Consent **2.**
Board of Supervisors

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Public Defender Appointment

Department: Board of Supervisors

Presentation:

Document Signatures:

NAME n/a
of PRESENTER:

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

TITLE n/a
of PRESENTER:

Source of Mandate

or Basis for Support?:

Information

Agenda Item Text:

Appoint Richard Karwaczka as the Public Defender effective February 10, 2019.

Background:

11-581. Public defender; appointment

In any county the board of supervisors may establish the office of public defender and appoint a suitable person to hold that office.

Department's Next Steps (if approved):

Administrative process for appointment.

Impact of NOT Approving/Alternatives:

The County will not have a Public Defender as required by State statute.

To BOS Staff: Document Disposition/Follow-Up:

n/a.

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

No file(s) attached.

Consent **3.**

Board of Supervisors

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Create Legal Advocate Department

Department: Board of Supervisors

Presentation:

Document Signatures:

NAME n/a

of PRESENTER:

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

TITLE n/a

of PRESENTER:

Source of Mandate

or Basis for Support?:

Information

Agenda Item Text:

Create the Legal Advocate Department effective February 10, 2019.

Background:

ARS 11-251, 11-584, and Rule 6 of the Criminal Rules of Procedure, which requires appointment of counsel for indigent persons, with County responsibility to compensate counsel.

Department's Next Steps (if approved):

Administrative process for this creation.

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

n/a

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

No file(s) attached.

Consent **4.**

Community Development

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Authorizing the abandonment of public right-of-way within Mescal Lakes Unit II

Department: Community Development Division: Right of Way

Presentation: Recommendation:

Document Signatures: # of ORIGINALS 4

NAME Jackie Watkins TITLE Director/County Engineer
of PRESENTER: of PRESENTER:

Docket Number (If applicable):

Mandated Function?: Source of Mandate ARS 28-7201 thru 28-
7215
or Basis for Support?:

Information

Agenda Item Text:

Adopt Resolution 19-02 authorizing the abandonment of a dedicated public right-of-way within Mescal Lakes Unit II, known as a portion of Dorothy Avenue described in Exhibit A.

Background:

Larry Hubbard applied for the abandonment of public right-of-way known as Dorothy Lane in 2016. Adjoining property owners and local utilities were contacted to give comment on the proposed abandonment. Mescal Fire Department required an emergency gate be included in the site plan to allow emergency vehicle access to Meadowlark Drive from Dorothy Lane. The applicant and Cochise County entered into an agreement that full abandonment of the right-of-way would be contingent upon providing said emergency access.

In October 2018, the County received a letter from John Moran, Mescal-J6 Fire District Fire Chief, stating "Mescal-J6 Fire District will no longer require an all weather access road from N. Dorothy Avenue". Cochise County and the Applicant now agree to eliminate that condition of transfer from the agreement and now request a full abandonment of the subject right-of-way.

Area utilities have been contacted and have made no objections to the abandonment.

Land Purchase Fee was determined to be \$9,300.00. Applicant has paid all fees associated with this abandonment.

Department's Next Steps (if approved):

If the abandonment is approved, no further Board action is required. Upon recording of the resolution and quit claim deed, staff will forward copies to the applicant.

Impact of NOT Approving/Alternatives:

The described portion of Dorothy Avenue will remain a dedicated public right-of-way.

To BOS Staff: Document Disposition/Follow-Up:

Please return copy of Resolution and original Agreement and Deeds to H&F Att: Teresa Murphy

Attachments

Executive Summary

Location Map

Executive Summary Map

Mescal Fire Department Letter

Resolution 19-

Amended Agreement for Transfer of Property

Quit Claim Deed

Quit Claim Deed

Consent **5.**

Finance

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Demands

Department: Board of Supervisors

Presentation:

Document Signatures:

NAME n/a
of PRESENTER:

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

TITLE n/a
of PRESENTER:

Source of Mandate
or Basis for Support?:

Information

Agenda Item Text:

Approve demands and budget amendments for operating transfers.

Background:

Auditor-General's requirement for Board of Supervisors to approve.

Department's Next Steps (if approved):

Return to Finance after BOS approval.

Impact of NOT Approving/Alternatives:

Board of Supervisors will not be in compliance with State law.

To BOS Staff: Document Disposition/Follow-Up:

Return to Finance after BOS approval.

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

No file(s) attached.

Action **6.**

Board of Supervisors

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Ratification of JP5 Appointment

Department: Board of Supervisors

Presentation:

Document Signatures:

NAME Britt Hanson
of PRESENTER:

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

TITLE Chief Civil Deputy
of PRESENTER:

Source of Mandate
or Basis for Support?:

Information

Agenda Item Text:

Pursuant to A.R.S. 38-431.05, ratify the appointment of Pat Call as Justice of the Peace for Precinct 5, effective as of March 1, 2019, as made in open session at a special meeting held on February 12, 2019.

On February 12, 2019, at a special meeting of the Board, two members of the Board of Supervisors voted to appoint Supervisor Pat Call as Justice of the Peace for Precinct 5, effective as of March 1, 2019. This vote was taken in open session. Supervisor Call, being the subject of the proposed appointment, abstained from voting. This agenda item is being proposed for the Board to have the opportunity to ratify that appointment. A more detailed description of the action to be ratified is in the minutes of the open session for that February 12, 2019 special meeting, which minutes are attached to the agenda item or are available from the Clerk of the Board of Supervisors.

Background:

On February 12, 2019, at a special meeting of the Board, two members of the Board of Supervisors voted to appoint Supervisor Pat Call as Justice of the Peace for Precinct 5, effective as of March 1, 2019. This vote was taken in open session. Supervisor Call, being the subject of the proposed appointment, abstained from voting. This agenda item is being proposed for the Board to have the opportunity to ratify that appointment. A more detailed description of the action to be ratified is in the minutes of the open session for that February 12, 2019 special meeting, which minutes are attached to the agenda item or are available from the Clerk of the Board of Supervisors.

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

n/a

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds
1:

Fund Transfers
Attachments

No file(s) attached.

Action **7.**

Board of Supervisors

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Annual Performance Review of County Administrator/Review of Contract

Department: Board of Supervisors

Presentation:

Document Signatures:

**NAME
of PRESENTER:**

Peggy Judd, Ann English, Pat Call

Mandated Function?:

Recommendation:

of ORIGINALS

Submitted for Signature:

**TITLE
of PRESENTER:**

Board of Supervisors

**Source of Mandate
or Basis for Support?:**

Information

Agenda Item Text:

Annual performance review of County Administrator and discussion and possible action regarding the term of the contract with County Administrator Edward Gilligan .

Pursuant to A.R.S. § 38-431.03, Subsection (A), paragraph (1), the Board may enter into executive session for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, or resignation of a public officer, appointee, or employee of any public body.

Background:

This item is the routine annual performance review for County Administrator and a review of the term of his current contract. The required notice to personnel re: Executive Session has been sent.

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

n/a

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

No file(s) attached.

Action **8.**

Health & Social Services

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Childhood Lead Poisoning Prevention Services

Department: Health & Social Services

Presentation:

Document Signatures:

NAME Carrie Langley
of PRESENTER:

Mandated Function?:

REMINDER: You will use this Agenda Item template if your item involves a Grant (whether a new or renewal grant). You also must attach the Grant Approval Form to the item before Finance will approve it. Select the SPECIAL LINKS on your left-hand menu and Click on "Grant Approval Form". Then complete the form, save it and attach it to your item (on the Attachments tab).

Information

Agenda Item Text:

Approve IGA between the Arizona Department of Health Services and Cochise County Health and Social Services regarding Childhood Lead Poisoning Prevention Services project, in the annual amount of \$25,000, effective February 1, 2019 through January 31, 2024.

Background:

Lead is a naturally occurring heavy metal, but most high levels in the environment that people are exposed to come from human activities. When ingested or inhaled, lead is highly toxic and exerts irreversible effects on nearly every organ system. Children under the age of six (6) years are especially at risk because they are still developing, have a tendency to put objects and their hands in their mouth, and absorb lead easily. Children can experience lifelong learning, behavioral and developmental problems. While lead poisoning is one hundred percent (100%) preventable, there was still an average of four hundred (400) unique children identified with EBLLs above the Centers for Disease Control and Prevention (CDC) reference value of 5µg/dL per year between 2011 and 2016 in Arizona.

Department's Next Steps (if approved):

Your approval is respectfully requested.

Impact of NOT Approving/Alternatives:

CHSS will be limited in its ability to build capacity to implement lead poisoning prevention activities and increase blood lead testing of children living in high-risk areas of the county.

To BOS Staff: Document Disposition/Follow-Up:

N/A

Budget Information

Information about available funds

Budgeted: **Funds Available:** **Amount Available:**

Unbudgeted: **Funds NOT Available:** **Amendment:**

Account Code(s) for Available Funds

1:

Fund Transfers

Missing Custom Expenditures Program, please contact
Destiny Software

	Fiscal Impact
Fiscal Year:	2019
One-time Fixed Costs? (\$\$\$):	
Ongoing Costs? (\$\$\$):	
County Match Required? (\$\$\$):	
A-87 Overhead Amt? (Co. Cost Allocation \$\$\$):	0.00
Source of Funding?:	
Fiscal Impact & Funding Sources (if known):	
Net county subsidy is calculated as follows:	
Budgeted Salaries/EREs	\$ 0
A-87 OH @ 46.98%	0
Authorized OH	\$ 0
Net County Subsidy	\$ 0

Attachments

Grant Approval Form
Executive Summary
IGA

Action **9.**

Human Resources

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

CCT Benefits and Rates

Department: Human Resources

Presentation:

Document Signatures:

NAME
of PRESENTER: Ed Gilligan

Mandated Function?:

Docket Number (If applicable):

Recommendation:

of ORIGINALS 0

Submitted for Signature:

TITLE
of PRESENTER: County Administrator

Source of Mandate

or Basis for Support?:

Information

Agenda Item Text:

Approve the proposed employer/employee health care benefit cost share schedule for fiscal year 2019-2020.

Background:

Cochise County has been a participating entity in the Cochise Combined Trust (CCT) since July 1, 2002. The CCT continues to be administered by Erin Collins & Associates. On January 25, 2019 at the annual planning meeting, the CCT board voted unanimously to approve and adopt a benefit and rate structure for FY 2019-2020 with minimal plan changes and no increased premium cost. The Trust is financially stable and current County trust reserves are at \$6,537,736. Because costs are not increasing, it is recommended that the Board of Supervisors make no modifications to the current employer/employee health care benefit cost share schedule.

Department's Next Steps (if approved):

The County's open enrollment process will commence April 1, 2019 through April 30, 2019. Employees who would like to make benefit plan changes can do so, employees who do not want to make any changes would be required to do nothing.

Impact of NOT Approving/Alternatives:

The Open Enrollment process would have to be delayed while alternative funding strategies were researched and presented to the Board of Supervisors for consideration.

To BOS Staff: Document Disposition/Follow-Up:

None.

Budget Information

Information about available funds

Budgeted: Funds Available: Amount Available:

Unbudgeted: Funds NOT Available: Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Fiscal Impact & Funding Sources (if known):

Missing Custom Expenditures Program, please contact
Destiny Software

Fiscal Impact

Fiscal Year:

One-time Fixed Costs? (\$\$\$):

Ongoing Costs? (\$\$\$):

County Match Required? (\$\$\$):

A-87 Overhead Amt? (Co. Cost Allocation \$\$\$):

Source of Funding?:

Fiscal Impact & Funding Sources (if known):

No budgetary increase for FY 2019-2020

Attachments

[Presentation](#)

Action **10.**

Information Technologies

Regular Board of Supervisors Meeting

Meeting Date: 02/26/2019

Cochise County Educational Technology Consortium Proposal and Acceptance Offer

Department: Information Technology

Presentation:

Document Signatures:

NAME
of PRESENTER:

Joe Casey & Jacqui Clay

Mandated Function?:

Recommendation:

of ORIGINALS 2

Submitted for Signature:

TITLE
of PRESENTER: CIO & School
Superintendent

Source of Mandate
or Basis for Support?:

Docket Number (If applicable):

Information

Agenda Item Text:

Approve the Cochise County Educational Technology Consortium (CCETC) Proposal and Acceptance Offer in response to Request for Proposal 2019: CCETC Fiber Build.

Background:

The CCETC put out a Request For Proposal to build a fiber optic network to provide high speed internet to the schools and libraries throughout Cochise County in an attempt to obtain an E-Rate Grant. The CCETC proposal and offer letter is for the winning bidder.

Department's Next Steps (if approved):

Submit E-Rate application.

Impact of NOT Approving/Alternatives:

Will not be able submit E-rate application.

To BOS Staff: Document Disposition/Follow-Up:

Sign two copies and send to department.

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

CCETC Offer and Acceptance Letter

Presentation

Regular Board of Supervisors
Meeting

Board of Supervisors

Meeting Date: 02/26/2019

State and Federal Legislation Discussion

Department: Board of Supervisors

Presentation: Recommendation:

Document Signatures: # of ORIGINALS

Submitted for Signature:

NAME na TITLE na
of PRESENTER: of PRESENTER:Mandated Function?: Source of Mandate
or Basis for Support?:

Information

Agenda Item Text:

Discussion and possible action regarding state and federal legislative matters listed or described in the attached County Supervisors Association Legislative Policy Committee Agenda, the Arizona Association of Counties (AACo) Legislative Policy Committee Agenda, and the proposed State budget, and other matters related thereto.

Background:

na

Department's Next Steps (if approved):

na

Impact of NOT Approving/Alternatives:

na

To BOS Staff: Document Disposition/Follow-Up:

na

Budget Information

Information about available funds

Budgeted: <input type="radio"/>	Funds Available: <input type="radio"/>	Amount Available:
Unbudgeted: <input type="radio"/>	Funds NOT Available: <input type="radio"/>	Amendment: <input type="checkbox"/>

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

LPC AgendaLPC Minutes

2/25/19 BA
 1 THE RUSSELL'S LAW FIRM, PLC
 2 202 E. WILCOX DR.
 3 SIERRA VISTA, AZ 85635
 4 Tel: (520)458-7246
 5 Fax: (855)778-5559
 By: D. Christopher Russell, Esquire
 State Bar No. 22674
 Courtdocs@russells lawfirm.com
 Attorney for Petitioner

FILED

2019 FEB 25 PM 1:21

JAY J HURLEY
 CLERK OF SUPERIOR COURT
 BA
 DEPUTY

FEB 25 2019

Clerk Superior Court
AMY J HURLEY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF COCHISE

DAVID WELCH, individually and on behalf
 of ALL CITIZENS OF COCHISE
 COUNTY, PRECINCT FIVE,

Case No.: CV201900060

Petitioner,

**ORDER TO SHOW CAUSE
 & EX PARTE ORDER OF
 PRELIMINARY INJUNCTION**

v.

COCHISE COUNTY BOARD OF
 SUPERVISORS, PATRICK G. CALL, ANN
 ENGLISH, AND PEGGY JUDD,

AZ ST SPEC ACT Rule 4 (c)
 Issued Feb 25, 2019 at 12:44pm

Respondents.

Assigned Hon.: _____

A petition for a writ of mandamus and for immediate injunctive relief having been filed in this matter on February 14, 2019, and Petitioner's Emergency Petition for Ex Parte Injunctive Relief and Restraining Order having been filed on February 25, 2019, on consideration of the petition and emergency motion:

IT IS HEREBY ORDERED pursuant to Arizona Special Action Rule 4(c), that the Defendants shall appear on 8 day of March, 2019, at 10:00 am/pm, in Division 7 of the Superior Court of Cochise County, Arizona to show cause as to why Plaintiffs' requested relief should not be granted.

THIS COURT FINDS that 1) immediate and irreparable injury will result to the movant that is not remediable by money damages before the adverse party can be heard in opposition; 2) Petitioner has established a strong likelihood that he will succeed on the merits; 3) the balance of hardships favors the

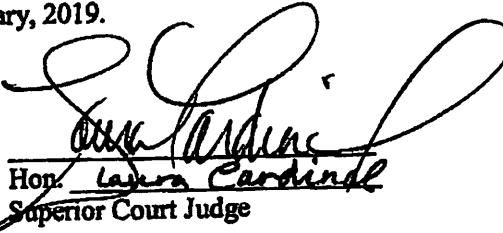
1 grant of a preliminary injunction and restraining order; and 4) public policy favoring compliance with
2 statutory public official meeting laws favors granting the injunction.

3 IT IS THEREFORE FURTHER ORDERED that the Defendants are enjoined from taking any
4 further action to appoint Pat Call to the position of Justice of the Peace for Justice Court, Precinct Five
5 until further order of this Court.
6

7 IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order To Show Cause &
8 Ex Parte Order of Injunction on the above-named respondents and on all parties to the action by
9 electronically transmitting same to Defendant's official county emails listed on the Cochise County
10 Board of Supervisors website as: piudd@cochise.az.gov for Peggy Judd, ncall@cochise.az.gov for Pat
11 Call, and aenglish@cochise.az.gov for Ann English which shall be the manner of service for this action
12 and on Plaintiffs' counsel at courtdocs@russellslawfirm.com.
13

14 DATED THIS 25 day of February, 2019.

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Hon. Laura Cardinal
Superior Court Judge